

SUMMARY OF ARGUMENT

Newly discovered DNA evidence from a 1979 murder scene conclusively establishes that Gary Cifizzari did not commit the crime for which he was convicted and has spent more than 35 years in prison. In addition to exonerating Mr. Cifizzari, the DNA evidence—developed from semen deposited on the nightgown of the 75-year-old victim, Ms. Concetta Schiappa—identifies Michael Giroux, the original suspect who had no connection to Mr. Cifizzari and who went on to commit other serious crimes, as the real perpetrator. In the face of such overwhelming evidence of innocence, Mr. Cifizzari’s conviction cannot stand.

The Commonwealth’s case against Mr. Cifizzari was predicated entirely on “expert” bitemark comparison testimony, which the scientific community has since condemned as unreliable. At the trial in 1984, the Commonwealth offered the testimony of three experts, each of whom—infected by biasing influences—claimed they could unequivocally “match” Mr. Cifizzari’s dental impression to patterned injuries left on the victim’s body. At the time, these opinions were endorsed as reliable, and the Commonwealth assured the jury that the experts were infallible. The introduction of expert testimony identifying Mr. Cifizzari as the “biter” sealed his fate, even though the Commonwealth failed to offer any other evidence placing Mr. Cifizzari at the scene of the crime.

In the decades since Mr. Cifizzari’s conviction, the scientific community has rebuked this so-called “individualization” bitemark testimony as lacking any scientific basis. Such testimony has contributed to numerous proven wrongful convictions, and one need look no further than the misidentification of Mr. Cifizzari—as demonstrated through the DNA evidence—to appreciate the unreliability of these methods. The scientific community’s rejection of such testimony has been so forceful that one of the Commonwealth’s original experts, Dr. Richard Souviron, has recanted the very testimony he offered at Mr. Cifizzari’s trial. Dr. Souviron’s work in this case to right a

past wrong is a testament to the fact that the change in bitemark science constitutes newly available evidence warranting a new trial for Mr. Cifizzari.

Although unreliable bitemark comparison was the only inculpatory evidence introduced at Mr. Cifizzari's trial, a number of other factors contributed to his wrongful conviction. Mr. Cifizzari did not become a suspect in the police investigation until several years after the murder when his older brother Michael Cifizzari, who suffered from chronic schizophrenia and intellectual disabilities, made a false confession to the police. Even then, Gary Cifizzari was not dragged into the story until the police encouraged Michael Cifizzari—during a fifth unrecorded statement—to name his brother as a participant in the crime. Michael gave these statements at a time when he was exhibiting acute psychotic behavior; not surprisingly, the statements were inconsistent with the physical evidence, were internally inconsistent, and failed to mention the one fact that the DNA evidence has conclusively established to be true: that Michael Giroux—a man completely unconnected to either Cifizzari brother—was the murderer. Unfortunately, Michael Cifizzari was also convicted of murder in connection with this crime and died in prison before the physical evidence in the custody of the Commonwealth was tested for DNA.

In addition, Mr. Cifizzari was prejudiced by defense counsel's failure to raise a third-party culprit defense or a defense of inadequate police investigation. Trial counsel failed to introduce any of the readily available evidence regarding Michael Giroux, who had both the motive and opportunity to commit the murder and whom the police suspected but ultimately—and inexplicably—did not charge. In fact, trial counsel for Gary Cifizzari, in contrast to counsel for Michael Cifizzari, did not even mention Michael Giroux at any point during the trial. Mr. Cifizzari's counsel also failed to argue that the police conducted an inadequate investigation, particularly with respect to Michael Giroux. Sadly, when the trial judge asked Mr. Cifizzari's

counsel if he was planning to argue that the police investigation had been inadequate, counsel admitted that the thought had not even crossed his mind.

Because the newly discovered DNA evidence establishes that Mr. Cifizzari was not the contributor of semen and saliva on the victim's nightgown and instead identifies Michael Giroux as the single, true perpetrator, there is no doubt that it would have been a real factor in the jury's deliberations and conclusions about Mr. Cifizzari's guilt or innocence. Accordingly, Mr. Cifizzari asks this Court to overturn his conviction and order a new trial pursuant to Mass. R. Crim. P. 30. Mr. Cifizzari is innocent of the crime for which he was convicted and respectfully requests that more than 35 years later, this Court finally see that justice be done.